

ENTERED

May 30, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

CARY DUANE CANTWELL,

Plaintiff,

v.

BOBBY LUMPKIN,

Defendant.

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Civil Action No. 6:22-CV-00046

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the May 12, 2023, Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Mitchel Neurock. (Dkt. No. 13). Magistrate Judge Neurock made findings and conclusions and recommended that Plaintiff’s Motion to Alter or Amend Judgment Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, (Dkt. No. 12), be denied. (Dkt. No. 13 at 2–3). Magistrate Judge Neurock further recommends that a certificate of appealability be denied in this case. (*Id.* at 3–4).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On May 22, 2023, Plaintiff filed two objections. (Dkt. No. 14). First, Plaintiff asserts a double jeopardy claim by stating that “he was found guilty by the jury, and then also found guilty by the trial judge at the time of his sentencing.” (Dkt. No. 14 at 2–3). Second, Plaintiff argues that he has properly stated a claim for abandonment of counsel. (*Id.* at 3–4).

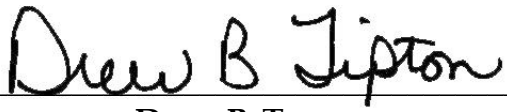
In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Neurock’s M&R, (Dkt. No. 13), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court;
- (2) Plaintiff’s Motion to Alter or Amend Judgment Pursuant to Fed. R. Civ. P. Rule 59(e), (Dkt. No. 12), is **DENIED**; and
- (3) A certificate of appealability is **DENIED**.

It is SO ORDERED.

Signed on May 28, 2023.


DREW B. TIPTON
UNITED STATES DISTRICT JUDGE